extended to misdemeanor cases. *Shelp* v. *U. S.*, 26 C. C. A. 570, 81 Fed. 694. The logical result of this holding is that a state cannot enact a statute dispensing with arraignment and plea in a criminal trial. *Hack* v. *State, supra* (*dictum*).

The state has an interest in the life and liberty of its citizens. It is to the interest of the state that one charged with crime should be given a trial in which all the essentials of due process of law should appear. Hence that which the law makes essential to a valid trial cannot be dispensed with or affected by the consent of the accused. *Hopt* v. *Utah*, 110 U. S. 574. It has been held that arraignment and plea is essential to a valid trial and comes within the above rule. *State* v. *Walton*, 50 Ore. 142, 91 Pac. 490.

The decision in the principal case would seem to be sound in theory and reason. To hold that the accused has impliedly waived his right to arraignment and plea by failure to object before verdict would be to deprive him of his constitutional rights by a mere implication.

EXEMPTION OF NONRESIDENTS FROM SERVICE OF CIVIL PROCESS—PARTIES—WITNESSES—ATTORNEYS.—*Held*, a nonresident and his attorney within the state for the purpose of bringing a suit are exempt from service of civil process in another action. *Read* v. *Neff*, 207 Fed. 890.

Nonresident parties are, by the weight of authority, held exempt from the service of civil process, whether or not there is detention of the person. *Halsey* v. *Stewart*, 4 N. J. L. 426; *Hale* v. *Wharton*, 73 Fed. 739; *Long* v. *Hawken*, 114 Md. 234, 79 Atl. 190. For in either case a party is distracted from pressing his suit, and on the ground of public policy he should be unfettered by service of process in another action. *Halsey* v. *Stewart, supra; Murray* v. *Wilcox*, 122 Iowa 188, 97 N. W. 1087, 101 Am. St. Rep. 263. The exemption applies to nonresident parties upon any judicial proceeding. *Kinne* v. *Lant*, 68 Fed. 436; *Matthews* v. *Tufts*, 87 N. Y. 568. The exemption covers a reasonable time before and after the proceeding. *Kinne* v. *Lant, supra; Wilson* v. *Donaldson*, 117 Ind. 356, 20 N. E. 250. If the nonresident party comes within the state on other business also he is not exempt. *Finucane* v. *Warner*, 194 N. Y. 160, 86 N. E. 1118. In one or two states a distinction has been made between nonresident plaintiffs and nonresident defendants, holding the latter exempt because under greater compulsion. *Bishop* v. *Vose*, 27 Conn. 1; *Wilson Sewing Machine Co.* v. *Wilson*, 51 Conn. 595, 22 Fed. 803. This distinction would seem unsound, for in either case the party is compelled to elect between entering the state and foregoing his rights.

The immunity of nonresident witnesses from service of civil process is quite generally recognized. *Capwell* v. *Sipe*, 17 R. I. 475, 33 Am. St. Rep. 890. To hold otherwise would make it difficult to secure attendance and would paralyze the functions of the court.

This immunity extends to nonresident attorneys within the state in the interests of a client, as they are officers of the court. *Central Trust Co.* v. *Milwaukee St. Ry. Co.*, 74 Fed. 442.

INJUNCTION—TRESPASS—ENCROACHMENT OF WALL.—The defendant erected a building adjoining the plaintiff's land. In the course of con-

struction the wall bulged outward overhanging the property of the plaintiff about two inches, but neither the owner nor the contractor knew of the encroachment until after the building was completed. The suit was for mandatory injunction to compel removal of the wall *Held,* no injunction will lie. *Combs* v. *Lenox Realty Co.* (Me.), 88 Atl. 477.

It seems settled that equity has jurisdiction to compel removal of an encroaching building. *Huber* v. *Stark,* 124 Wis. 359, 102 N. W. 12, 109 Am. St. Rep. 937; *Curtis Co.* v. *Spencer Co.,* 203 Mass. 448, 89 N. E. 534, 133 Am. St. Rep. 307. The principal case follows what seems to be the better rule and that adopted by the majority of the courts that where the offending wall was built in good faith and the amount and value of the property appropriated is trivial, then if the cost of removal far outweighs the damage suffered by the trespass, the mandatory injunction should be refused. *Methodist Society* v. *Akers,* 167 Mass. 560, 46 N. E. 381; *Harrington* v. *McCarthy,* 169 Mass. 492, 48 N. E. 278, 61 Am. St. Rep. 298; *Hunter* v. *Carroll,* 64 N. H. 572, 15 Atl. 17. The rule as above stated is apparently an extension of the maxim, he who seeks equity must do equity. Every case should depend on its own circumstances and no mandatory injunction should issue when it would operate inequitably. *Levi* v. *Street Ry. Co.,* 193 Mass. 116, 78 N. E. 853. And in a Pennsylvania case where the remedy was granted it was decreed that the plaintiff should pay half the expenses of removal. *Pile* v *Pedrick,* 167 Pa. St. 296, 31 Atl. 646, 46 Am. St. Rep. 677. A majority of the cases granting an injunction will reveal some inequitable conduct on the part of defendant. *Kershishian* v. *Johnson,* 210 Mass. 135, 96 N. E. 56, 36 L. R. A. (N. S.) 402; *Norton* v. *Elwert,* 29 Ore. 583, 41 Pac. 926; *Baugh* v. *Bergdoll,* 227 Pa. St. 42, 76 Atl. 207.

The rule seems flexible enough to grant relief in cases of slight encroachment upon land in large business sections where the property is very valuable for in such cases the damages would be material.

INSURANCE—ACCIDENT INSURANCE—EXTENT OF LIABILITY.—Plaintiff sues to recover under an accident policy insuring him against injuries "wholly and continuously from the date of the accident disabling him and preventing him from performing every duty pertaining to any business or occupation." He was so injured in an accident that he was unable to attend to his business, yet he was often able to go out and might have attended to some of the minor details of the same. *Held,* the insurer is liable. *National Life and Accident Ins. Co.* v. *O'Brien's Ex'x* (Ky.), 159 S. W. 1134.

The interpretation of such terms as those used in the policy quoted *supra* has given rise to much contention. Some courts hold that there can be no recovery unless the insured is totally disabled to earn a livelihood at any employment—unless he is unable to do any kind of work in any manner. *Lyon* v. *Railway Passenger Assurance Co.,* 46 Iowa 631; *Merrill* v. *Traveler's Ins. Co.,* 91 Wis. 329, 64 N. W. 1039. Others hold that he need not be so disabled as to prevent him from doing anything whatsoever, but that he is totally disabled if common prudence requires him to cease his labors and rest in order to effect a more speedy